

Kent Bowler, pro se  
Amy Bowler, pro se  
1049 East Paiute Drive  
Washington, UT  
Telephone: 435 817-3855

FILED  
U.S. DISTRICT COURT  
2009 DEC -8 A 9:56  
DISTRICT OF UTAH  
BY: [Signature]

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

Kent Bowler  
Amy Bowler

Plaintiffs,

v.

AMERICANWEST BANK; Far West Bank  
a division of AMERICANWEST BANK;  
Mortgage Electronic Registration Systems, Inc  
("MERS") as Beneficiary; Nathan Dorius,  
as alleged Substitute Trustee; and John Does 1-10

Defendants.

VERIFIED COMPLAINT

Case: 2:09cv01070  
Assigned To : Kimball, Dale A.  
Assign. Date : 12/8/2009  
Description: Bowler v. American West  
Bank et al.  
1

Honorable:

Plaintiffs Kent Bowler and Amy Bowler, acting pro se, complain of Defendants and allege  
as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Kent Bowler and Amy Bowler (the "Bowlers") are bona fide residents of Washington County, State of Utah.
2. Defendant AMERICANWEST BANK ("AMERICANWEST"), with its offices in Spokane, Washington.

3. Defendant Far West Bank a division of AMERICANWEST BANK, with its offices in South Jordan, Utah.

4. Defendant MERS is a Delaware corporation registered to do business in the State of Utah (Entity Number: 7427133-0110), but without a registered agent in the State of Utah. MERS' address is at 1818 Library Street, Suite 300, Reston, VA 20190. MERS may not be a party pursuant to the Deed of Trust in this case. See Landmark National Bank v. Kesler, No. 98,489 (Kan. 08/28/2009); and Mortgage Electronic Registration System, Inc. v. Southwest Homes of Arkansas, No. 08-1299 (Ark. 03/19/2009). The language of the Deed of Trust relied upon by those courts in finding that MERS is not a proper party to the deed is the same as used in the Deed of Trust in this case:

"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

See a copy of the Deed of Trust attached hereto as Exhibit A.

5. Defendant Nathan Dorius is referenced as follows in a letter dated July 22, 2009 as an alleged Substitute Trustee. (See Exhibit B, original copy is presumably in the possession of Nathan Dorius.)

6. Defendants John Does 1 through 10 are not known at the time of filing of this Complaint, but when their identities are known, notice will be given to the Court and parties.

7. As used herein, "Defendant" or "Defendants" refers to the originating mortgage loan institution involved herein and any legal successor or assign.

8. This court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and §1332. The amount in controversy exceeds \$75,000.00. This court also has, pursuant to 28 U.S.C. § 1367, supplemental jurisdiction over all other claims that are so related to claims in this action that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue is properly laid in the Central Division of the United States District Court for the District of Utah, pursuant to 28 U.S.C. §1391(c).

#### FACTS

10. Plaintiffs incorporate herein by this reference the allegations of the preceding paragraphs 1 through 9 of this Complaint.

11. On or about January 28, 2008, defendant AMERICANWEST made a loan to plaintiffs in the principle sum of \$795,000.00 (loan #1900010307) secured by a Deed of Trust recorded against the property located at 1049 East Paiute Drive, Washington, UT 84780 and more particularly described as:

**PARCEL 1:**

All of Lot Fifty-Seven (57), INDIAN OAKS ESTATES SUBDIVISION PHASE 4, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

**PARCEL 2:**

A parcel of ground adjacent to lot 57, INDIAN OAKS ESTATES SUBDIVISION PHASE 4, Washington, Utah said parcel being subject to a 15 foot Canal Easement and a Public Utilities and Canal Maintenance Access Easement More particularly described as follows: Beginning at the Southeast Corner of said Lot 57; thence 87 27'00" West 229.46 feet to the Southwest Corner of said Lot 57, thence South 12 51'20" East 18.80 feet to the Northerly Right of Way line of Paiute Drive; thence South 87 27'00" East 224.55 feet along said Right of Way line; thence North 0 02'52" West 17.86 feet to the Point of Beginning.

12. On or about July 21, 2009, AMERICANWEST, purportedly as Beneficiary and purportedly as alleged Trustee as nominee for the Deed of Trust listed herein, appointed “NATHAN S. DORIUS” (“DORIUS”) as alleged Substitute Trustee. See a copy of Substitution of Trustee attached hereto as Exhibit B, original copy is presumably in the possession of Nathan Dorius.

13. On or about July 21, 2009 a NOTICE OF DEFAULT AND ELECTION TO SELL was filed by NATHAN S. DORIUS, SUCCESSOR TRUSTEE as Entry No. 20090028270 in the office of the Washington County Recorder; attached as Exhibit C, original copy is presumably in the possession of Nathan Dorius.

14. A NOTICE OF TRUSTEE’S SALE was issued by DORIUS setting the date of sale for December 8, 2009 (See Exhibit D).

#### FIRST CAUSE OF ACTION

#### **AMERICANWEST BANK/MERS lacks standing to foreclose the deed of trust.**

15. Plaintiff incorporates under this cause of action all the allegations of paragraphs 1 through 15 above.

16. The Parties to the Deed of Trust that is the subject matter of this action were: Kent Bowler, Amy Bowler as Trustors; Far West Bank a Division of AMERICANWEST BANK, Spokane, WA as Trustee; AMERICANWEST BANK as Lender; and MERS “solely as a nominee for Lender and Lender’s successors and assigns” as “Beneficiary under [the] Security Instrument.”

17. The party that is or has purportedly commenced foreclosure proceeding is

AMERICANWEST BANK, listing themselves as Beneficiary, although they are defined as the Lender under the Deed of Trust, even though MERS is listed as the sole nominee/Beneficiary. See a copy of the NOTICE OF TRUSTEE'S SALE attached hereto as Exhibit D.

18. At the time of this Complaint, there been no evidence that the purported owner of the Note, AMERICANWEST BANK, does actually possess the Note and is in fact the legal successor-in-interest, holder-in-due-course, or the real-party-in-interest with the ability to initiate or authorize a foreclosure proceeding.

19. Proof of existence and ownership of the Note is demanded of all possible parties named herein.

20. On information and belief, Plaintiffs asserts that AMERICANWEST BANK/MERS is not the holder in due course of the original Promissory Note that is the basis of the debt claim in this matter.

21. On information and belief, Plaintiff asserts that AMERICANWEST BANK/MERS is not the holder of the original Deed of Trust that is the evidence of the security for the debt claim in this matter.

22. Without any evidence that AMERICANWEST BANK/MERS has the legal right to foreclose the deed of trust, the non-judicial proceeding in this case is invalid and any purported foreclosure sale is void.

## SECOND CAUSE OF ACTION

### **Rescission under 15 USC §1635(i)**

23. Plaintiff incorporates under this cause of action allegations of paragraphs 1 through 22 above.

24. Pursuant to 15 USC §1635(i), Plaintiff has a right to rescind her loan transaction as a result of the foreclosure proceeding against their family home:

25. On June 12, 2009, Michael E. Koch on behalf of AMERICANWEST BANK acknowledged receipt of documents, including a Notice of Right to Cancel dated May 29, 2009, and summarily rejected the demands therein. (See Exhibit E, Letter from Michael E. Koch dated June 12, 2009.)

26. Under 15 USC §1635(i), in the case of a foreclosure action and based on the principle of equitable tolling, Plaintiffs are entitled to rescind their loan transaction and to have the court issue a declaratory judgment that the lien is void.

27. Under 15 USC §1635(i), Plaintiffs are entitled to costs for enforcing their statutory rights, including, but not limited, to court costs and reasonable attorney fees.

### THIRD CAUSE OF ACTION

#### **The Court should compel defendants to produce documents and provide information.**

28. Plaintiffs hereby incorporate paragraphs 1 through 27 above.

29. Plaintiffs have rights under FRCP Rule 34 (b)(3)(A) to demand production of Forensic Accounting documents under Rules of Evidence 103 and Rule 402.

30. Pursuant Rules of Evidence Rule 103 and Rule 402 and Federal Rules of Civil Procedure Rule 34(b)(3)(A), Plaintiffs demand that the Defendants produce all the requested



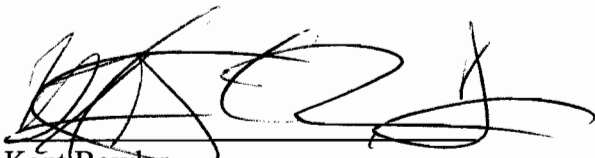
documents and information listed in Exhibit F, DEMAND FOR PRODUCTION OF FORENSIC ACCOUNTING DOCUMENTS, as well as the original, wet ink signature, Promissory Note, and ask that the Court order the Defendants, under the Federal Rules, to immediately produce all documents and information requested regarding AMERICANWEST BANK Loan No. 1900010307; Tax Serial # APN W-IOE-4-57-A; Commonly Known Address: 1049 East Paiute Drive, Washington, Utah [84780]; Deed of Trust Record: 20080003806 dated 1/28/2008 with a recorded date of 1/29/2008. Should Defendants fail to comply, the Court should find that the Defendants have no standing or basis for their lien and for prosecuting the contemplated foreclosure action.

WHEREFORE, Plaintiff prays the honorable Court grant judgment in favor of Plaintiff and against Defendants: under the first cause of action, to render judgment that AMERICANWEST BANK/MERS has no standing to bring any action at law or non-judicially; under the second cause of action, to grant rescission of the loan contract under 1635(i) of TILA, and the implementing Regulation Z, and voiding the mortgage lien on Plaintiff's property on the legal grounds stated; and under the third cause of action to order the Defendants to comply with Plaintiffs' demands for production of the Note and other documents and information evidencing that Defendants have standing to bring a foreclosure action, and that should Defendants fail to do so, that the lien be declared invalid..

Furthermore that the Court should grant any statutory and regulatory damages, punitive damages if available, attorney fees, court costs and fees and all costs associated with this action.

Plaintiffs reserve the right to amend this complaint and provide further exhibits as needed to properly state their complaint before this Court.

Respectfully submitted this 7<sup>th</sup> Day of December, 2009



Kent Bowler

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Amy Bowler



## VERIFICATION

We the undersigned do affirm that the facts stated in the foregoing Verified Complaint are true and correct to the best of our understanding and recollection. Done this 7<sup>th</sup> Day of December 2009

  
Kent Bowler

Amy Bowler

STATE OF UTAH )  
 )ss  
COUNTY OF WASHINGTON )

Appeared before me this 7<sup>th</sup> Day of December, 2009, Kent Bowler and Amy Bowler and did affirm that they did duly execute the foregoing Verified Complaint.

Notary Public

In the County of Salt Lake, State of Utah, on this 7 day of December 2009, a notary public, personally appeared Kent Bowler, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

**In the County of \_\_\_\_\_, State of Utah, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.**

Notary Signature and seal

NOTARY PUBLIC  
MARIA DENSLOW



Serve upon Defendants:

American West Bank  
9019 E. Appleway Blvd.  
Spokane, Washington 99212

Far West Bank  
A Division of American West Bank  
9019 E. Appleway Blvd.  
Spokane, Washington 99212

Mortgage Electronic Registration Systems, Inc. (MERS)  
P. O. Box 2026,  
Flint, MI 48501

Mortgage Electronic Registration Systems, Inc. (MERS)  
1818 Library Street, Suite 300  
Reston, VA 20190.

Nathan Dorius  
STUCKI STEELE PIA ANDERSON & RENCHER  
299 S. Main Street, Suite 2200  
Salt Lake City, Utah 84111